

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CASE NO.: 3:17-cv-02376

APL MICROSCOPIC, LLC,

Plaintiff,

v.

REPAIR STEM CELL ASSOCIATION LLC,
and DONALD R. MARGOLIS,

Defendants.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff APL MICROSCOPIC, LLC by and through undersigned counsel, brings this Complaint against Defendants REPAIR STEM CELL ASSOCIATION LLC and DONALD R. MARGOLIS (Collectively “Defendants”) for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff APL MICROSCOPIC, LLC (“APL”), brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute APL’s original copyrighted works of authorship.

2. APL’s principal is Andrew Paul Leonard. Leonard is a highly skilled and experienced creator of microscopic photography. Using a scientist’s tool and “eye” to capture the splendor of a minuscule world beyond the normal range of human vision, Leonard has documented cells and cellular bodies with high contrast experimental imagery and special optical

effects to illustrate an infinitesimally small stage where color and light come together to create a commercial product unlike any available in the commercial photography market today.

3. Leonard's images, which are assigned to APL, are highly desirable, particularly in the medical, pharmaceutical, and biological research industries. APL licenses its copyrighted works, such as the one in this case, to educational publishers, health care companies, and other medical institutions and businesses for use in connection with the study of biology and related fields. Leonard's images are often licensed by APL for use in pharmaceutical advertising.

4. APL's images are in high demand. Leonard's micrography of a bone marrow stem cell was featured on the cover of Time magazine's August 7, 2006 issue. Also that year, Leonard's image of a human embryonic stem cell was featured in Time Magazine as one of "Best Photos" of 2006.

5. APL's images are unique and scarce. Leonard is one of only a very few photographers who are capable of producing quality images of cells. Few if any photographers besides Leonard have successfully captured a quality image of a bone marrow stem cell.

6. Andrew Paul Leonard's livelihood depends, in part, on the ability to control the licensing of his works.

7. Defendant REPAIR STEM CELL ASSOCIATION LLC is a company specializing in stem cell treatment.

8. Defendant DONALD R. MARGOLIS is the Founder and Chairman of the Repair Stem Cell Institute, also known as Repair Stem Cell Association LLC.

9. APL alleges that Repair Stem Cell Association LLC and Donald R. Margolis copied APL's copyrighted work from the internet in order to advertise, market and promote their business activities. The Defendants committed the violations alleged in connection with

Defendants' business for purposes of advertising and promoting sales to the public in the course and scope of the Defendants' business.

JURISDICTION AND VENUE

10. This is an action arising under the Copyright Act, 17 U.S.C. § 501.
11. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).
12. Defendants are subject to personal jurisdiction in Texas.
13. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendants engaged in infringement in this district, Defendants reside in this district, and Defendants are subject to personal jurisdiction in this district.

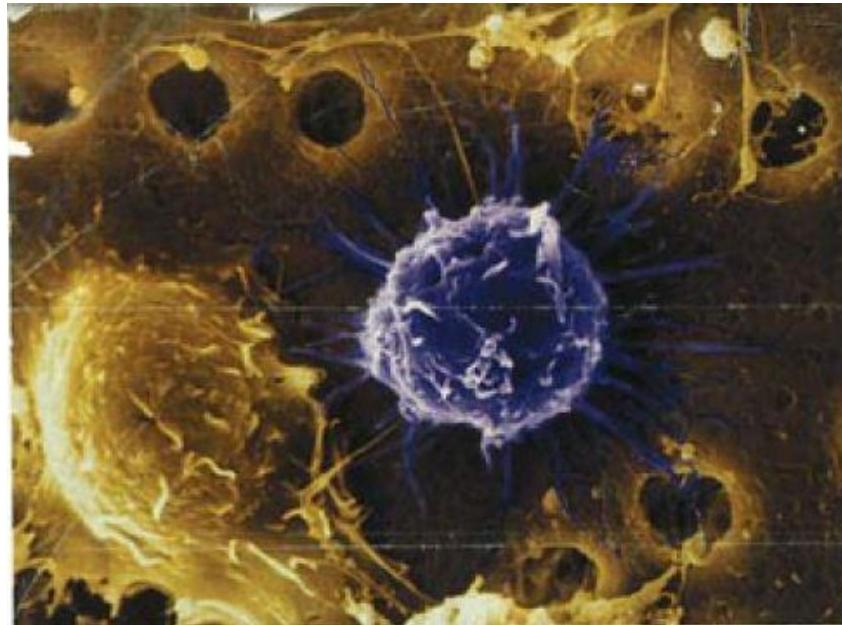
DEFENDANT

14. Repair Stem Cell Association LLC d/b/a Repair Stem Cell Institute is a Corporation with its principal place of business at 3010 LBJ Freeway, Suite 1200, Dallas, TX 75234 , and can be served by serving its Registered Agent, Donald R. Margolis, 3010 LBJ Freeway, Suite 1200, Dallas, TX 75234.

15. Donald R. Margolis is an individual who resides in Dallas, Texas.

THE COPYRIGHTED WORK AT ISSUE

16. APL created a photograph which is shown below and referred to herein as the “Work”.



17. APL registered the Work with the Register of Copyrights on December 20, 2007 and was assigned the registration number VA 1-426-177. The Certificate of Registration is attached hereto as Exhibit 1.

18. At all relevant times APL was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANT

19. The Defendants have never been licensed to use the Work at issue in this action for any purpose.

20. On a date after the Work at issue in this action was created, but prior to the filing of this action, Defendants copied the Work.

21. Defendants copied APL’s copyrighted Work without APL’s permission.

22. After Defendants copied the Work, they made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its stem cell treatment.

23. Defendants copied and distributed APL's copyrighted Work in connection with Defendants' business for purposes of advertising and promoting Defendants' business, and in the course and scope of advertising and selling products and services.

24. APL's works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

25. Defendants committed copyright infringement of the Work as evidenced by Exhibit 2.

26. APL never gave Defendants permission or authority to copy, distribute or display the Work at issue in this case.

27. APL notified the Defendants of the allegations set forth herein on April 18, 2017. To date, Defendants have failed to respond to Plaintiff's Notice. A copy of the Notice to the Defendants is attached hereto as Exhibit 3.

28. APL sent a second notification of the allegations set forth herein on August 9, 2017. To date, Defendants have failed to respond to Plaintiff's Notice. A copy of the Notice to the Defendants is attached hereto as Exhibit 4.

29. Plaintiff has engaged the undersigned attorneys and has agreed to pay them a reasonable fee.

COUNT I
COPYRIGHT INFRINGEMENT

30. Plaintiff incorporates the allegations of paragraphs 1 through 29 of this Complaint as if fully set forth herein.

31. APL owns a valid copyright in the Work at issue in this case.

32. APL registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

33. Defendants copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without APL's authorization in violation of 17 U.S.C. § 501.

34. Defendants performed the acts alleged in the course and scope of its business activities.

35. APL has been damaged.

36. The harm caused to APL has been irreparable.

WHEREFORE, the Plaintiff prays for judgment against the Defendants that:

a. Defendants and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. §§ 501;

b. Defendants be required to pay Plaintiff its actual damages and Defendants' profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. §§ 504.

c. Plaintiff be awarded its attorneys' fees and costs of suit under the applicable statutes sued upon; and

d. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: September 7, 2017

Respectfully submitted,

/s/ Joel B. Rothman
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